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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/638,236	08/07/2003	Martinus C.M. Bakx	D-7875	4094

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EXAMINER

FIDEI, DAVID

ART UNIT	PAPER NUMBER
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3728

DATE MAILED: 09/14/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/638,236

Applicant(s)

BAKX, MARTINUS C.M.

Examiner

David T. Fidei

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 2-5,8,9,11 and 12 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 8,9,11 and 12 is/are allowed.
- 6) ☒ Claim(s) 2-5 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 07 August 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date ____.
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: ____.

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 2 and 5 are rejected under 35 U.S.C. 102(b) as being anticipated by DE document no. 37 11 322 C1. As to claim 2, figures 1 and 2 shown a wraparound article carrier for packaging an article, the carton comprising opposed top (3) and base walls (2) interconnected by opposed side walls (4, 5) thereby forming a tubular structure, wherein an aperture is provided in the base wall to accommodate a portion of the article, and a bracing tab (16-19) is formed in part from, hingedly connected to, a side wall (4, 5) that is also formed at least in part from the base wall to define the aperture and folded so as to form a spacer for causing the top and base walls to be spaced by a predetermined distance.

As to claim 5, the bracing tab extends to a portion of the article disposed adjacent the top wall, see figure 2.

3. Claims 2, 3 and 5 are rejected under 35 U.S.C. 102(b) as being anticipated by EP document no. 0 048 506. As to claim 2, figures 6 and 30 shown a wraparound article carrier for packaging an article, the carton comprising opposed top (64; 260) and base walls (60; 264) interconnected by opposed side walls (62, 66; 252, 264) thereby forming a tubular structure, wherein an aperture is provided in the base wall to accommodate a portion of the article, and a bracing tab (72; 272, 274) is formed in part from, hingedly connected to, a side wall (any one of 62, 66; 252, 264) that is formed at least in part from the base wall to define the aperture and folded so as to form a spacer for causing the top and base walls to be spaced by a predetermined distance.

As to claim 3, in the embodiment of figure 30 said one side wall comprises a securing flap (266) and a side panel (256), said securing flap (266) being hingedly connected to the base wall along a first fold line (256) and extending toward the top wall to a free edge of the securing

flap, said side panel (256) being connected to the top wall and secured to said securing flap, said bracing tab being formed in part from said securing flap and hingedly connected to the securing flap along a second fold line (not number, but co-extensive with fold line 256).

As to claim 5, the bracing tab extends to a portion of the article disposed adjacent the top wall, see figures 7 and 30.

Claim Rejections - 35 USC § 112

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter, which the applicant regards as his invention.

5. Claims 3 and 4 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 3, said one side wall has no antecedent basis in claim 2.

Allowable Subject Matter

6. Claim 4 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, second paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

7. Claims 8, 9, 11 and 12 are allowed.

Response to Arguments

Applicant's arguments filed July 8, 2005 have been fully considered but they are not persuasive.

Claim Rejections – 35 USC 112, second paragraph

While claim 2 has been modified to reflect that one of said side walls has previous antecedent basis and if one wishes to reference this wall, than “said one of said side walls” adequately fulfills this function. Claim 3 has not been amended in such a manner. Hence the term “said one side wall” has no antecedent basis. Since claim 2 has been amended to correct this “deficiency” under 35 USC 112, second paragraph, it is believed this was merely an oversight.

As to claim 12, the Examiner believes the record is sufficiently clear that claim 11, the second to the last line, the phrase “one of said first and second side walls” is the antecedent basis for “the one of said side walls” in claim 12.

Claim Rejections – 35 USC 102

The Examiner appreciates applicant’s position regarding the recitation of claim 2 where the bracing tab is recited as “formed in part from said side walls”. However, the application of DE document no. 37 11 322 C1 and EP document no. 0 048 506 in meeting this limitation was not an oversight on the Examiners part, but involved much consideration.

In analyzing applicant’s invention as set out in the pending claims, claims are to be given their broadest reasonable during prosecution, see *In re Priest*, 582 F.2d 33, 37 199 USPQ 11, 15 (CCPA 1978), and limitations from the specification will not be read into the claims, see, e.g. *In re Prater*, 415 F.2d 1393, 1404-1405, 162 USPQ 541, 550-51 (CCPA 1969). Office personnel are to give claims their broadest reasonable interpretation in light of the supporting disclosure. *In re Morris*, 127 F.3d 1048, 1054-55, 44 USPQ2d 1023,1027-28 (Fed. Cir. 1997), see MPEP 2106.

The present specification page 6, lines states “a spacer (or bracing) tab 34, struck from base wall panel 14 and extending into spacer flap 12 so as to interrupt fold line 22”. Which is about the only language in the present application that is pertinent to this feature. Nowhere in this context does the application assign any special meaning on how the terminology “formed in part from at least one of said side wall and hingedly connected to said one of said side walls” is to be construed.

From is defined in New Roget's Thesaurus and Webster's Dictionary, 1993 edition, as denoting source, distance, absence or departure. In a similar manner ones' arm can be said to be "formed in part from" the shoulder of the body and connected thereto. In the same ordinary meaning of the terms, it is submitted one skilled in the art would readily appreciate that the equivalent bracing tabs referenced in the aforementioned rejections are formed at least in part from the base wall (as they are clearly cut from the base wall); and formed in part from at least one of said side wall (as the equivalent bracing tabs emanate in a unitary fashion outwardly from the side walls). It is further submitted this is a fairly easy, ordinary meaning of the terms from manner in which the language is couched. It is also submitted to constrain the language to mean "the spacer (or bracing) tab 34, struck from base wall panel 14, extends into spacer flap 12 so as to interrupt fold line 22", or something analogous thereto, requires one to read limitations from the specification into the claims. Accordingly, the rejections have been maintained.

Conclusion


8. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

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9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to David T. Fidei whose telephone number is (571) 272-4553. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mickey Yu can be reached on (571) 272-4562.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



David T. Fidei
Primary Examiner
Art Unit 3728

dtf
September 12, 2005